

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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<b>GILBERTO ROSA,</b>	:
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Plaintiff,	:
	:
– against –	:
	:
<b>UNITED STATES and FEDERAL BUREAU OF PRISON,</b>	:
	:
	:
Defendants.	:
	:
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**MEMORANDUM AND ORDER**

22-CV-818 (AMD) (LB)

**ANN M. DONNELLY**, United States District Judge:

The *pro se* plaintiff, who is incarcerated at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York, filed this complaint on February 10, 2022, alleging that he has not received adequate health care at the MDC. He originally brought this action against the United States; the Federal Bureau of Prisons (“BOP”); Felipe Martinez, the MDC’s warden; and Dr. Bailor, a doctor at the MDC. (ECF No. 1.) In an order dated March 17, 2022, the Court *sua sponte* dismissed the complaint with leave to file an amended complaint. On March 28, 2022, the plaintiff filed an amended complaint asserting a Federal Tort Claims Act (“FTCA”) claim against the United States and the BOP, and attaching the September 20, 2021 denial of his FTCA administrative claim by the BOP.<sup>1</sup> (ECF No. 10.) For the reasons that follow, the amended complaint may proceed against the United States.

**DISCUSSION**

A district court should “review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a

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<sup>1</sup> The amended complaint does not name Martinez or Dr. Bailor as defendants. (ECF No. 10.)

governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Upon review, the Court is required to “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint . . . (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); *see also Liner v. Goord*, 196 F.3d 132, 134 & n.1 (2d Cir. 1999) (noting that under Prison Litigation Reform Act, *sua sponte* dismissal of frivolous prisoner complaints is not only permitted but mandatory). The Court construes the plaintiff’s *pro se* submissions with “special solicitude” and interprets them to raise the “strongest arguments that they suggest.” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-76 (2d Cir. 2006) (citation and quotation marks omitted).

The plaintiff asserts an FTCA claim against both the United States and the BOP, a federal agency. “Any FTCA claim must be alleged against the United States, not a specific United States agency.” *Leytman v. U.S. Dep’t of Homeland Sec. Transp. Sec. Admin.*, 804 F. App’x 78, 79 (2d Cir. 2020) (citing *FDIC v. Meyer*, 510 U.S. 471, 477 (1994) and *Rivera v. United States*, 928 F.2d 592, 608-09 (2d Cir. 1991)). Thus, the plaintiff’s FTCA against the BOP is dismissed for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b)(1).

### CONCLUSION

Accordingly, the amended complaint against the BOP is *sua sponte* dismissed. No summons will issue to this defendant. The Clerk of Court is respectfully directed to amend the caption.

The plaintiff’s FTCA claim may proceed against the United States. The Clerk of the Court is respectfully directed to issue an amended summons against the United States. The United States Marshals Service is respectfully directed to serve the amended summons and

amended complaint on the United States in accordance with Federal Rule of Civil Procedure 4(i)(1).

The case is referred to the Honorable Lois Bloom, United States Magistrate Judge, for pretrial supervision.

The Clerk of the Court is respectfully directed to mail a copy of this Order to the plaintiff.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

**SO ORDERED.**

s/Ann M. Donnelly

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ANN M. DONNELLY

United States District Judge

Dated: Brooklyn, New York  
April 5, 2022